

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Plaintiffs,)

v.)

THOMAS DARDEN; JOHN T. VAUGHN,)
INDUSTRIAL HEAT, LLC; IPH)
INTERNATIONAL B.V.; and)
CHEROKEE INVESTMENT PARTNERS,)
LLC,)

Defendants.)

CASE NO. 1:16-cv-21199-CMA

INDUSTRIAL HEAT, LLC and IPH)
INTERNATIONAL B.V.,)

Counter-Plaintiffs,)

v.)

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Counter-Defendants,)

and)

J.M. PRODUCTS, INC.; HENRY)
JOHNSON; FABIO PENON; UNITED)
STATES QUANTUM LEAP, LLC;)
FULVIO FABIANI; and JAMES A. BASS,)

Third-Party Defendants.)

ORDER ON DISCOVERY

This matter coming to be heard before the Court on February 7, 2017 upon (1)

Defendants' Privilege Log, which Plaintiffs believe includes communications in which the attorney-client privilege was waived; (2) Defendants responses to Plaintiffs' requests for production; and (3) Defendants subpoenas to banking institutions:

IT IS HEREBY ORDERED:

WITH RESPECT to Plaintiffs' Privilege Log:

- Plaintiffs shall produce their Privilege Log to Defendants by Friday, February 10, 2017. [Tr. 51:5–13.].

WITH RESPECT to Plaintiffs' production of documents:

- Plaintiffs and Defendants shall meet and confer to determine whether documents requested by Defendants (specifically, testing data) has not been produced by Plaintiffs. Plaintiffs' counsel must remind Plaintiff Dr. Rossi that to the extent that Plaintiffs intentionally fail to provide testing data, Dr. Rossi will be sanctioned by the Court. [Tr. 49:24-50:16].

WITH RESPECT to Plaintiffs' responses to Defendant, John Vaughn's First Set of Interrogatories:

- Plaintiffs shall serve their supplemental interrogatory answers to Defendant, John Vaughn's First Set of Interrogatories by February 10, 2017. Such responses shall include all screen names or aliases Plaintiff Rossi uses to post information on the Internet. To the extent Plaintiff Rossi does not use screen names or aliases to post information on the Internet, he must issue a response verifying the same. [Tr. 51:15–52:3.]

WITH RESPECT to determining whether Cherokee employees are subject to the attorney/client privilege:

- Defendants shall brief the issue of whether Cherokee employees are protected under the attorney-client privilege, and shall submit their brief and any supporting sworn affidavits for consideration by this Court on or by February 14, 2017. Defendants may alternatively bring Cherokee employees to testify in Court. [Tr. 52:23–54:20.]

- Plaintiffs shall submit a response to Defendants’ brief on or by February 21, 2017. [Tr. 52:23–54:20.]

- If needed, Defendants shall reply on or by February 24, 2017. [Tr. 52:23–54:20.]

WITH RESPECT to determining whether communications involving Dewey Weaver, Paul Morris, and Deep River Ventures are protected by the attorney-client privilege:

- Defendants must provide the Court with all communications for which Defendants declare the privilege applies for in camera review. The Court warns that Defendants and their counsel may be sanctioned if the Court determines that ninety-five (95) percent of the documents reflect business discussions and not legal discussions. [Tr. 28:8-29:9.]

WITH RESPECT to Defendants production of documents:

- Defendants must produce the final agreement between Defendants and Dewey Weaver, Paul Morris, and Deep River Ventures. [Tr. 29:23-30:7.]

WITH RESPECT to Defendants’ responses to Plaintiffs’ request numbers 16-19, 30-36, 41-42, and 46:

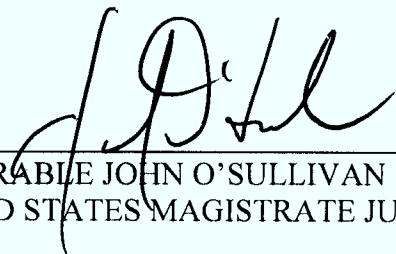
- Defendants shall identify to Plaintiffs by 4:00 p.m. on Friday, February 10, 2017 the bates-numbers of each document Industrial Heat is relying on in prosecuting or defending claims in this litigation. [Tr. 37:20–38:5; 39:25–40:5; 41:10-12; 42:5-8; 42:15-21; 43:20- 44:16; 55:2-7.]. Plaintiffs are also required, in advance of Defendants’ Rule 30(b)(6) deposition of

Leonardo Corporation, to identify documents they intend to rely on in prosecuting or defending their claims. [Tr. 42:5-7; 43:14-16; 44:14-16].

WITH RESPECT to Defendants' Notice of Intent to Subpoena Bank of America, TD Bank and Bank United:

- Defendants may issue the subpoenas to the banks, and must clarify that the subpoena responses should be sent to Plaintiffs who are not to open the records. Defendants are responsible to pay the costs associated with the subpoena responses. The Parties are directed to meet and confer with respect to objections to the subpoenas. The subpoena responses will not be provided to Defendants until the Court has made a ruling on the issue. [Tr. 46:12-47:11.]

DONE AND ORDERED in Miami, Florida this 21 day of February, 2017.



HONORABLE JOHN O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

cc: Counsel of Record